

No. 86-1325

Supreme Court, U.S.
FILED

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JOSEPH F. SPANIOL, JR.
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In The
Supreme Court of the United States
October Term, 1986

ANTHONY J. CHESNEY and
CHARLOTTE CHESNEY,

Petitioners,

vs.

CAROL H. SPRAGGINS,

Respondent.

**BRIEF IN OPPOSITION TO THE PETITION
FOR THE WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW JERSEY**

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STATEMENT OF THE CASE

Respondent, Carol H. Spraggins, sued Anthony J. Chesney and Charlotte Chesney, Petitioners, in the Circuit Court of the City of Virginia Beach, on February 16, 1983. Respondent filed a motion for entry of the default judgment on April 4, 1983. Respondent withdrew the motion in return for Petitioners' agreement to meet and negotiate. Following the meeting, Respondent's counsel endorsed an Order granting Petitioners' leave to file pleadings. On August 17, 1983, Petitioners entered a general appearance by counsel with the filing of a joint Answer to Respondent's Motion for Judgment, a joint Demurrer and a Motion to Quash Service of Process, and a Motion to Dismiss for Lack of Jurisdiction as to the Petitioner, Charlotte Chesney, only.

On October 3, 1983, the case was set for trial in Virginia on December 8, 1983. Petitioners were immediately notified of the trial date by Virginia counsel, and on October 12, 1983, Virginia counsel mailed notice by certified mail to the Chesneys that he was withdrawing as counsel.

In November of 1983, the Petitioners' attorney, Boyd Scarborough, requested to withdraw from representing the Chesneys. The Chesneys had not paid any of his attorneys fees and refused to answer his phone calls or letters concerning the case. The Chesneys were totally uncooperative and made it impossible for Mr. Scarborough to represent them. The Virginia Court granted his request to withdraw in an Order dated November 9, 1983.

On December 8, 1983, Virginia counsel for Respondent, attorney James Thurman obtained a Judgment after

full trial on the merits, Petitioners not appearing in person nor by counsel despite proper notice. (See Petitioners' Appendix, p. A12). The Chesneys attempted to file a motion to continue the case. This motion, however, was not received by the Virginia Court in a timely fashion. Judge Whitehurst, who had already rendered a Judgment in the case, later dismissed the motion for being untimely.

The Petitioners motioned to re-open the case and an evidentiary hearing was held as to all issues on December 29, 1983, before the Honorable Henry L. Lam. (It should be noted that Judge Lam was not the trial judge). This hearing was attended by the Chesneys. Evidence was heard as to all issues, including the Petitioners' claim for denial of counsel. In an Order dated January 13, 1984, the Petitioners' motion to re-open was denied and the Judgment below given full force. (See Petitioners' Appendix, p. A10).

On January 27, 1984, the Petitioners attempted to file a Notice of Appeal to the Virginia Supreme Court. This Notice of Appeal was dismissed by the Court.

The Respondent filed suit on January 23, 1984 in the New Jersey Superior Court, Law Division, to enforce the Virginia Judgment in New Jersey.

On October 10, 1984, after a hearing in which both parties were represented by counsel, the Honorable Gilbert Van Sciver, J.S.C., entered an Order granting Summary Judgment for the Respondent, pursuant to the Full Faith and Credit Clause of the United States Constitution. (See Petitioners' Appendix, p. A7).

The Petitioners appealed to the New Jersey Superior Court, Appellate Division. In a per curiam opinion dated August 27, 1986, the Appellate Division affirmed the Law Division's Judgment against the Petitioners. Contrary to the Petitioners' version of the facts, the New Jersey Appellate Division did, in fact, address the Petitioners' due process claims. (See Petitioners' Appendix, p. A2).

The Petitioners filed an appeal and a Petition for Certification with New Jersey Supreme Court; same being denied without a written opinion. (See Petitioners' Appendix, p. A1).

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**SUMMARY OF REASONS FOR
DENIAL OF THE WRIT**

Respondent respectfully submits that no special or important reasons exist for the granting of the Petition for the Writ of Certiorari. The Petitioners' issue of the right to counsel in civil matters has been fully and clearly decided in that it is textbook law that no right to counsel in civil matters is guaranteed by the United States Constitution.

Further, under the facts of the Petitioners' case, the Petitioners were in no way denied the right to counsel by either the State of Virginia or New Jersey.

Lastly, the Petitioners are appealing from the wrong judgment. The Petitioners have appealed the New Jersey Judgment which granted full faith and credit to a Judgment obtained by the Respondent in the State of Virginia.

The issue of whether the Petitioners were denied counsel in Virginia is not reviewable by a state court enforcing a sister state's judgment pursuant to full faith and credit. The Respondent maintains that the only proper appeal by the Petitioners would have been from the Virginia Judgment, where the Petitioners allege the denial of counsel took place.

REASONS FOR DENIAL OF THE WRIT

Supreme Court Rule 17(1) states in part that "a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special or important reasons therefor". No such special or important reasons exist in this case which should compel the Court to grant the Petitioners' Writ of Certiorari. It is textbook law that the United States Constitution does not guarantee an individual the right to counsel in civil actions. No right to counsel in civil matters existed at common law, and no such right was preserved by the Constitution. The issue is and has been for hundreds of years, fully and clearly decided and need not be addressed by this Court.

In their petition, the Petitioners cite numerous cases which they claim support their position that a right to counsel in civil matters exist. Every one of these cases, however, are criminal cases. The Petitioners cannot cite even one state or federal case which is precedent for or supports their position. This is because no court has ever held that such a right to counsel is contained in the Constitution, either enumerated or otherwise.

Further, without conceding her position, Respondent would submit to the Court that factually, the Petitioners were not denied the opportunity to retain counsel in either Virginia or New Jersey. As the New Jersey² Appellate Division so adeptly pointed out in their opinion, “(W)e think it as likely that the problems besetting them (the Chesneys) resulted not from extrinsic fraud but at best from defendants’ own willful neglect and at worst from a design of studied avoidance and evasion of the processes of court, both in Virginia and New Jersey”, (see Petitioners’ Appendix, p. A4).

The Petitioners have argued that their Virginia counsel abandoned them on the eve of trial. This is simply incorrect. Mr. Scarborough gave all of the proper notices to the Chesneys and applied to the Court in late October, early November 1983, to be relieved as counsel because the Chesneys refused to answer his phone calls or letters. Furthermore, the Chesneys had not paid him anything from the time he was retained, sometime between April and August 1983, until the time he withdrew, a period of some 4 to 8 months. The Chesneys made it completely impossible for Mr. Scarborough to represent them. By order dated November 9, 1983, Mr. Scarborough was relieved as counsel for the Petitioners. According to the Petitioners’ own version of the facts (with which the Respondent takes issue), the latest the Petitioners would have known that they did not have counsel in Virginia would have been November 28, 1983, a date which was not the *eve* of trial, but rather 10 days before trial.

The Petitioners have also argued that a New Jersey restraining order prevented them from obtaining counsel.

For numerous reasons this argument is invalid. To begin, the restraining order on its face did not prevent the Chesneys from obtaining Virginia counsel, nor did any fair reading of the Order do so. The restraining order was designed to prevent the Chesneys from disposing of their assets so as to prevent them from avoiding judgments against them. It allowed them reasonable living expenses and ostensibly, the right to use funds to pay their attorney reasonable fees.

It should also be noted that on no occasion did the Chesneys ever inquire with the Honorable J. Gilbert Van Sciver, (the judge who issued the restraining order), to determine whether they were restrained from using funds to obtain Virginia counsel. In fact, the initial restraining order contained a provision for the Chesney's New Jersey counsel, Alan Baybick, to be paid a \$1,000.00 fee. This restraining order did not prevent the Chesneys from paying Virginia counsel to represent them. Take note as well, that the restraining order was not in effect until months after Mr. Scarborough was retained, yet the Chesneys failed to pay him any fee during the course of his representation.

The Petitioners' issue is essentially moot because even if such a right to counsel existed, the Petitioners were in no way prevented from obtaining counsel, either in Virginia or New Jersey. The sole reason the Petitioners were left without representation in the Virginia courts was due to their own willful neglect and avoidance.

Lastly, the Respondent would point out to the court that the Petitioners are seeking a review of the New Jersey Judgment (the New Jersey Judgment enforced the Virginia Judgment pursuant to the Full Faith and Credit

Clause of the United States Constitution, Article IV, Section 1), and not the Judgment obtained in Virginia where the alleged denial of representation occurred. The Petitioners did not appeal the Virginia Judgment beyond the Virginia Supreme Court. They now seek to raise the right to counsel issue on collateral attack on Writ of Certiorari from the enforcing state, New Jersey. The Respondent maintains, again without prejudicing her previous position, that should this Court decide that a right to counsel in civil matters exists, and should the Court also find that the Petitioners were denied that right, their appeal would still fail because the issue of right to counsel would not be reviewable by a state court (i.e., New Jersey) enforcing a sister state's judgment pursuant to full faith and credit. Petitioners should have appealed the Virginia Judgment, where the alleged denial of counsel took place, and not the New Jersey Judgment which enforced it.

In sum, the Respondent submits that the issue raised by the Petitioners, the right to counsel in civil matters, has been and is fully and clearly decided, and that no special or important reasons exist for the granting of the Petition for the Writ of Certiorari.

CONCLUSION

Respondent respectfully prays that this Honorable Court deny the Petitioners' Petition for the Writ of Certiorari. Respondent contends that this appeal is frivolous and hereby prays that this Honorable Court, pursuant to United States Supreme Court Rules 49 and 50, impose on the Petitioners' costs, damages, and such further relief deemed just and equitable by the Court.

Respectfully submitted,

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